

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DON C. BENNETT, et al.,

Plaintiff(s),

No. C 11-1854 PJH

v.

**ORDER DENYING IN PART AND
GRANTING IN PART MOTION TO
DISMISS; DENYING MOTION TO STRIKE**

SIMPLEXGRINNELL LP,

Defendant(s).

Defendant's motion to dismiss and to strike came on for hearing on December 7, 2011. Plaintiffs appeared through counsel Karla Gilbride and Catha Worthman and defendant appeared through counsel Carolyn Hall. Having read the parties' papers and considered their arguments made at the hearing and the relevant legal authority, the court hereby DENIES in part and GRANTS in part defendant's motion to dismiss and DENIES its motion to strike, for the reasons stated at the hearing and summarized as follows.

1. Defendant's motion to dismiss the complaint for failure to state a claim is DENIED. The court finds the allegations of the complaint sufficient to put defendant on notice as to the claims and further finds that the complaint is not unduly conclusory. When read in its entirety the complaint contains more than the simple formulaic elements of the claims.

2. With regard to defendant's motion to strike, the court agrees with defendant that there is abundant law in this circuit establishing that plaintiffs as former employees of defendant lack standing to sue for injunctive relief. The court declines plaintiffs' invitation to try to "get around" the authority so holding. Because the court finds that a motion to strike is not the appropriate vehicle for making this argument, See Whittlestone, Inc. v. Handi-

1 Craft Co., 618 F.3d 970, 973 (9th Cir. 2010), but because the parties have fully addressed
2 this issue, the court construes the motion as one brought under Fed. R. Civ. P. 12(b) and
3 GRANTS the motion to dismiss the complaint with respect to the prayer for injunctive relief,
4 because it is not available as a matter of law.

5 As this prayer is the only aspect of the complaint that is dismissed, the court finds
6 that an amended complaint is unnecessary.

7 **IT IS SO ORDERED.**

8 Dated: December 7, 2011



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10 PHYLLIS J. HAMILTON
11 United States District Judge
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